

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Joseph R. Bowman

Date Application filed with the Town Clerk: June 23, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 3.352.1 of the Zoning Bylaw to operate a Class II restaurant, open after 11:30 p.m., not serving alcohol.

Location of property: 20 Belchertown Road (Map 15C, Parcel 19 and 2-19, COM Zone)

Legal notice: Published in the Daily Hampshire Gazette on July 13 and July 20, 2005, and sent to abutters on July 12, 2005.

Board members: Tom Simpson, Ted Rising and Susan Pynchon

Submissions:

The applicants submitted the following documents:

- A drawing of the front of the building, showing proposed signs and lighting
- A floor plan of the proposed restaurant
- A colored drawing of the proposed signs and exterior lights
- A Management Plan
- A sample menu
- A plan from the Town of Amherst GIS Reader showing the building, (outdated) property lines, adjacent streets and parking
- An aerial photograph of the site and the building.

The Planning Department submitted Memorandum Re: ZBA FY2005-00036, commenting on zoning, previous permits for the site, dimensional requirements, parking, landscape planting, lighting, signs and the management plan.

The Planning Department also submitted a plan from the Town of Amherst GIS Reader, showing the updated property lines.

The Fire Department submitted a Memorandum dated July 27, 2005, commenting on access, water supply, building and fire codes and the address.

Site Visit: July 26, 2005

At the site visit the Board was met by Joe Bowman, the applicant. The Board observed the following:

- The location of the proposed restaurant in the middle of the building known as Michael's Billiards, surrounded by commercial uses, adjacent to an apartment building, a gas station, across from a convenience store, and along a heavily traveled road, Route 9.
- The parking lot to be shared with Michael's Billiards
- The interior of the space to be renovated into the proposed pizza restaurant
- The billiards rooms located to the west and east of the proposed restaurant
- The doorways entering and exiting the proposed restaurant and connecting it with the billiards rooms.

Public Hearing: July 27, 2005.

The public hearing was held in the Town Room, Town Hall. Joseph Bowman presented the application. He made the following comments:

- The restaurant will operate as a take-out and delivery pizza restaurant.
- It will occupy the central area of Michael's Billiards building.
- During normal working hours, patrons will come in and out of the front door to pick up their orders.
- Patrons of Michael's Billiards who wish to purchase food will need to exit Michael's to enter the front door of Pioneer Valley Pizza, except after 11:30 p.m. on the weekends, when Michael's is very busy.
- At those times Michael's will open the additional game room at the west end of the building and the doors between Michael's and Pioneer Valley Pizza will be left open to allow patrons to walk through to the extra room.
- When the doors are open there will be a doorman at each door to control entry into the Billiards rooms.
- Patrons of Pioneer Valley Pizza who are under 21 years old will not be allowed to enter Michael's Billiards.
- After 11:30 p.m. on Fridays and Saturdays deliveries of pizza will occur through the back door.
- There will be a waiting area in the front of Pioneer Valley Pizza, inside of the front door.
- There would be no seating for patrons except in the waiting area. These seats are not intended to be used for dining.
- The building owner will assign 7 parking spaces to his business, 3 for delivery drivers and 4 for customers. These parking spaces will be located close to the front door of Pioneer Valley Pizza.

Mr. Bowman presented a floor plan of his proposed establishment.

The Board asked about the hours of operation. Mr. Bowman referred the Board to the Management Plan and stated that the hours would be as follows:

Friday and Saturday	11:00 a.m. to 3:00 a.m.
Sunday through Wednesday	11:00 a.m. to 1:00 a.m.
Thursday	11:00 a.m. to 2:00 a.m.

Mr. Bowman stated that there would normally be 1 cook and 3 or 4 delivery drivers, for a maximum of 5 employees on site at one time. There would normally be 3 employees on site from 11:00 a.m. to 5:00 p.m. and 5 employees after 5:00 p.m.

Mr. Bowman gave the following information about signs:

- There will be four signs in total.
- The signs will be wooden.
- The lights for the new entrance signs will be attached to the roof, as shown on the drawing submitted with the application.
- The signs will be located as follows:
 - The large one will be mounted on the canopy over the front entrance to the pizza establishment, facing the parking lot and the Cumberland Farms convenience store across the street.
 - The small one will be mounted on the side of the canopy facing the Florence Savings Bank building and the side parking lot/driveway.
 - The existing "Michael's" signs will be removed from the canopy at the front entry.
 - The third and fourth signs will be small ones attached to the bottom of the free-standing, two-panel Michael's Billiards signs located in the grassy island to the south of the parking lot. The existing sign structure has two parts that are installed at ninety degrees to one another and face in two different directions, for viewing by motorists approaching from different directions. These sign will have the same color scheme as the other signs.

Mark Snow, Assistant Building Commissioner, asked about the sharing of parking spaces with Michael's Billiards and whether parking would be adequate on Friday and Saturday nights.

Mr. Bowman stated that there is extra parking in the back of the building and on an adjacent lot to accommodate overflow parking from Michael's and the pizza restaurant.

Mr. Bowman also noted that there will be a fire separation wall installed between Michael's Billiards and the College Inn, which contains residential apartments. This wall will be installed by the owner of the building.

The Board inquired about deliveries. Mr. Bowman stated that for Sunday through Thursday delivery drivers will use the front door. For Fridays and Saturdays delivery drivers will use a door on the north side of the building that goes out to the rear parking lot and also provides access to the dumpster. He further noted that there are two doors on the north side of the building, one of which will be removed. A wall will be installed in its place.

In response to the memorandum received from Assistant Fire Chief, Mike Zlogar, the Board requested that the address of the business, including the street number, be displayed on one of the signs. Mr. Bowman agreed to include the address on the sign.

Ted Rising MOVED to close the evidentiary portion of the public hearing. Susan Pyncheon SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Tom Simpson MOVED to continue the deliberative portion of the public hearing to Wednesday, August 10, 2005, at 8:00 p.m. Ted Rising SECONDED the motion. The Board VOTED unanimously to continue the deliberative portion of the public hearing (the public meeting) to August 10, 2005.

Public Meeting continued to August 10, 2005

At the public meeting the Board discussed the application. Mr. Simpson noted that he had no basic objections to the application and that the applicant had submitted drawings of the signs, the floor plans and the Management Plan. Susan Pyncheon noted that the Management Plan stated that there would be a maximum of 8 people working on the premises at one time. That number was different from the number quoted in Mr. Bowman's presentation on July 27, 2005. After discussion with Mr. Bowman, the Board agreed to leave the maximum number of employees, including delivery drivers, at 8 as stated in the Management Plan.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required for all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed because the property is located on a heavily traveled road and the building is already being used as a billiards parlor. The surrounding properties contain an automobile service station, a convenience store, a mixed-use building, an auto sales business and multi-family housing. A take-out and delivery pizza restaurant will not be substantially different in its impact on the surrounding neighborhood.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since very little noise is expected to be generated by patrons entering and leaving the pizza establishment and lights will be downcast so as not to shine onto adjacent properties.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since there is ample parking available on the site and the driveway which serves the property has been in place and in use for several years, without causing inconvenience or hazard.

10.384 – Adequate and appropriate facilities would be provided for proper operation since the plans show that there is ample room inside the building for food preparation and a waiting area for patrons and there is ample parking available on the site.

10.386 – The proposal ensures that it is in conformance with Parking and Sign regulations since there is ample parking available on the site and the designs for the signs have been presented and approved by the Board.

10.388 – The proposal ensures adequate space for off-street loading and unloading of goods and products in that there is good driveway access to both sides of the building for deliveries.

10.389 – The proposal provides adequate methods of disposal in that the property is serviced by Town water and sewer lines and the restaurant has an agreement with a local trash hauler for disposal of trash, recycling and waste oil. The owner and his staff will perform litter control.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that it promotes the convenience and general welfare of the inhabitants of Amherst.

Zoning Board Decision

Ted Rising MOVED to approve the application with conditions. Susan Pynchon SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Joseph Bowman, under Section 3.352.1 of the Zoning Bylaw, to operate a Class II restaurant, open after 11:30 p.m., not serving alcohol, on the premises at 20 Belchertown Road (Map 15C, Parcels 19 and 2-19, COM Zone).

TOM SIMPSON

TED RISING

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, with conditions, to Joseph R. Bowman to operate a Class II restaurant under Section 3.352.1 of the Zoning Bylaw, open after 11:30 p.m., not serving alcohol, at 20 Belchertown Road, (Map 15C, Parcel 19 and 2-19, COM Zone), with the following conditions:

1. There shall be no dining on the premises of Mr. Bowman's restaurant. It shall operate solely as a take-out and delivery restaurant.
2. The hours of operation shall be as follows:

11:00 a.m. to 1:00 a.m.	Sunday through Wednesday
11:00 a.m. to 2:00 a.m.	Thursday
11:00 a.m. to 3 a.m.	Friday and Saturday
3. There shall be no alcohol or entertainment on the premises of Mr. Bowman's restaurant.
4. The restaurant shall be managed according to the Management Plan approved by the Board on August 10, 2005.
5. The restaurant premises shall be built according to the plan approved by the Board on August 10, 2005.
6. The signs shall be as approved by the Board on August 10, 2005.
7. The exterior lights shall be downcast and shall not shine on to adjacent properties or streets.
8. Upon change of ownership, the new owner shall submit a new Management Plan for review and approval by the Board.
9. The address, including street number, shall be displayed as part of the main sign over the door.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE